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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EDIE GOLIKOV, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

WALMART INC.,

Defendant.

Case No. 2:24-cv-08211-RGK-MAR

**WALMART INC.'S NOTICE OF
MOTION AND MOTION TO
DISMISS; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: January 6, 2025
Time: 9:00 am
Location: Courtroom 850

Assigned to the Hon. R. Gary Klausner
Dept.: Courtroom 850

Compl. filed: September 24, 2024

DAVIS WRIGHT TREMAINE LLP

NOTICE OF MOTION AND MOTION TO DISMISS

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 6, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable R. Gary Klausner of the above-titled Court, located at 255 East Temple Street, Los Angeles, CA 90012, Courtroom 850, 8th Floor, defendant Walmart Inc. will and hereby does move this Court for an order dismissing the Complaint filed by plaintiff Edie Golikov, pursuant to Federal Rules of Civil Procedure 8, 9(b), and 12(b)(6).

Ms. Golikov asserts seven causes of action, purportedly on behalf of a putative class comprised of individuals who purchased Walmart's Great Value Avocado Oil, for (1) violation of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq*; (2) violation of California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq*; (3) violation of California's Unfair Competition Law, Cal. Bus. & Pro. Code § 17200, *et seq*; (4) Breach of Express Warranty; (5) Negligent Misrepresentation; (6) Intentional Misrepresentation; and (7) quasi-contract. This Motion is made on the grounds that Ms. Golikov fails to state a claim upon which relief can be granted for any of her claims, and the Complaint should be dismissed in its entirety with prejudice. In particular:

- (1) Ms. Golikov's claims fail because she has not plausibly alleged that reasonable consumers would be misled by Walmart's Avocado Oil label, under either Federal Rules of Civil Procedure 8(a) or 9(b);
- (2) Ms. Golikov fails to state a claim for intentional misrepresentation because she does not allege the requisite fraudulent intent; and
- (3) Ms. Golikov fails to allege facts sufficient to support her request for punitive damages.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3, which began November 21 and continued on December 9, 2024.

This Motion is based upon this Notice of Motion, the attached Memorandum

of Points and Authorities, the concurrently-filed Declaration of Jacob M. Harper and exhibits thereto, and any other evidence or argument which the Court may consider.

DATED: December 9, 2024

DAVIS WRIGHT TREMAINE LLP

By: /s/ Jacob M. Harper
Jacob M. Harper

Attorneys for Defendant
Walmart Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This lawsuit is one of nearly a dozen copy-and-paste complaints recently filed against various retailers alleging that avocado oils are mislabeled as “avocado oil” because they are purportedly “adulterated with other oils.”¹ The first of these cases was *already dismissed as implausible*, in an opinion that applies with equal force to plaintiff Edie Golikov’s materially identical allegations against defendant Walmart Inc. here: In *McConnon v. The Kroger Co.*, 2024 WL 3941340 (C.D. Cal. June 21, 2024), the Honorable Stanley Blumenfeld, Jr. correctly held the plaintiff’s allegations that “avocado oil” was mislabeled because it was “adulterated” with “other oils,” without details establishing specifically how the oil was adulterated, “fail[ed] to plausibly state a claim for relief under Rule 8(a)” or “Rule 9(b).” *Id.* at *1–3. In other words, “Plaintiff [did] not adequately allege[] that the Avocado Oil is anything other than what it claims to be: cold-pressed avocado oil.” *Id.* at *3.

Undeterred by law or facts (or lack thereof), Ms. Golikov filed her complaint *after* this ruling, yet her allegations suffer from the same defects—she asserts only conclusory allegations that Walmart’s Great Value Avocado Oil is “impure” and “adulterated” (both insufficient, as Judge Blumenfeld found), nor does she allege plausibly that the Avocado Oil she purchased contains anything other than avocado oil (because she can’t without violating Rule 11). These defects kill all her claims. And while Ms. Golikov cites a *Washington Post* article reporting on the results of two studies (none of which involves any bottle actually purchased by Ms. Golikov), courts regularly reject such vague, flawed, and statistically insignificant studies,

¹ *E.g.*, *Morrison v. Sovena USA, Inc.*, 2:24-cv-08144, Doc. 1 (C.D. Cal. Sept. 23, 2024); *Golikov v. Walmart, Inc.*, 2:24-cv-08211 Doc. 1 (C.D. Cal. Sept. 27, 2024); *Smith v. Trader Joes Co., et al.*, 3:24-cv-06834, Doc. 1 (N.D. Cal. Sept. 27, 2024); *Dawar v. Sam’s West, Inc., et al.*, 1:24-cv-09106, Doc. 1 (N.D. Ill. Sept. 27, 2024); *Hawkins v. Walmart, Inc.*, 1:24-cv-00374, Doc. 1-1 (E.D. Cal. March 29, 2024); *Valdovinos v. Target Corp.*, 2:24-cv-08572, Doc. 1 (C.D. Cal. Oct. 4, 2024).

1 particularly where, as here, they are untethered to the bottle Ms. Golikov purchased.
2 *Meyer v. Colavita, Inc.*, 2011 WL 13216980, at *5 (S.D. Fla. Sept. 13, 2011)
3 (dismissing similar claims based on flawed U.C. Davis olive oil study); *see also*
4 *Bounthon v. Procter & Gamble Co.*, 2024 WL 4495501, at *7–8 (N.D. Cal. Oct. 15,
5 2024) (dismissing claims, as third-party testing did not plausibly support claim that
6 product contained PFAS). Her allegations fail to fill in the blanks, as she provides
7 none of the required detail explaining *how* or *why* the “avocado oil” label is false or
8 misleading. She does not allege, for example, what component renders the avocado
9 oil allegedly impure, how much any bottle allegedly contains, or why it renders the
10 avocado oil purportedly “impure” or “adulterated.” Nor does she allege how any
11 alleged “impurity” or “adulteration” of the Avocado Oil was material to reasonable
12 consumers, as required to state her claims. Put simply, Ms. Golikov pleads no
13 plausible theory to support her claim that the Avocado Oil label is misleading. Her
14 conclusory and sparse allegations fail to satisfy Rule 8(a) and 9(b).

15 The Complaint also fails for additional, independent reasons. Ms. Golikov
16 fails to sufficiently plead the fraudulent intent required for her intentional
17 misrepresentation claim. And her request for punitive damages also lacks the
18 necessary allegations of willful and malicious conduct.

19 The Court should dismiss the Complaint in full, and with prejudice.

20 **II. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY**

21 **A. This Action Is One of a Wave of Copycat “Avocado Oil” Cases.**

22 In February 2024, plaintiffs represented by the same counsel filed two class
23 action complaints based on legal theories and facts substantially identical to those
24 alleged here. *McConnon v. The Kroger Co.*, 2:24-cv-02601, Doc. 1-1 (C.D. Cal.
25 March 29, 2024); *Hawkins v. Walmart, Inc.*, 1:24-cv-00374, Doc. 1-1 (E.D. Cal.
26 March 29, 2024). *Hawkins*, like the present Complaint, alleged that Walmart’s
27 Great Value Refined Avocado Oil was “adulterated” and deceptively labeled as
28 “avocado oil,” *Hawkins*, Doc. 1-1; *McConnon* alleged the same about Kroger’s

1 Private Selection Cold-Pressed Avocado Oil, *McConnon*, Doc. 1-1. Both cases
2 alleged the plaintiff conducted independent testing confirming the products were
3 “adulterated” with “other oils.” *Hawkins*, Doc. 1-1 ¶ 19; *McConnon*, Doc. 1-1 ¶ 18.

4 On June 21, 2024, Judge Blumenfeld dismissed the *McConnon* complaint in
5 full, holding plaintiff failed to allege plausibly: (a) that the “avocado oil” label
6 conveys to reasonable consumers it is “pure,” and even if it did, (b) that the
7 “avocado oil” contains anything other than avocado oil. 2024 WL 3941340, at *3
8 (C.D. Cal. June 21, 2024). Briefing on the motion to dismiss in *Hawkins* is
9 complete and has been taken under submission. *Hawkins*, Doc. 18.

10 On August 27, 2024, *The Washington Post* published an article titled “*Why*
11 *your avocado oil may be fake and contain other cheap oils.*” Compl. ¶ 2. That
12 article “precipitated” at least eight more lawsuits (including this one) in the two
13 months that followed, based on the same legal theory dismissed in *McConnon*. *See*
14 *In re Avocado Oil Mktg. & Sales Practices Litig. (In re Avocado Oil)*, MDL No.
15 3133, Doc. 38 at 2, 7 (J.P.M.L. Nov. 22, 2024) (listing pending cases and asserting
16 these lawsuits were “precipitated” by *The Washington Post* reporting); *supra* n.1.

17 On October 23, 2024, the plaintiffs in six of the pending cases moved to
18 transfer the related actions pursuant to 28 U.S.C. § 1407 for coordinated or
19 consolidated pretrial proceedings in Boston or Chicago. *In re Avocado Oil*, MDL
20 No. 3133, Doc. 1. This case is among those they seek to consolidate, though
21 Plaintiff Edie Golikov opposes consolidation. Walmart opposed the motion to
22 transfer and argued, in the alternative, that any consolidation should be in the
23 Central District before Judge Blumenfeld. *In re Avocado Oil*, MDL No. 3133, Doc.
24 31. The briefing on the motion is complete and the motion remains pending.²

25
26
27
28 ² Consistent with that request, Walmart has also filed a notice of related cases in this
matter. *See* Doc. 23.

B. Ms. Golikov Vaguely Alleges the Avocado Oil Is “Impure.”

Walmart operates retail stores throughout the United States, including in California. Compl. ¶¶ 6, 11. One product sold in Walmart’s retail stores is Walmart’s Great Value Refined Avocado Oil (the Avocado Oil). *Id.* ¶ 5. The Avocado Oil’s front label states it is “Refined Avocado Oil,” and the back of the label includes an ingredient disclosure, which lists “avocado oil.” *Id.* ¶¶ 17–18. The label does not include the word “pure.” *See id.*

Ms. Golikov allegedly purchased a bottle of Avocado Oil from a store in California on November 14, 2021. *Id.* ¶¶ 6, 26. She contends she and other “reasonable consumers” read the label to represent the “product [] contains pure avocado oil.” *Id.* ¶ 19; *id.* ¶ 42 (“Defendant ... falsely represent[ed] that Great Value Avocado Oil is pure avocado oil.”). She alleges the Avocado Oil is “adulterated and impure” and that “[s]he would not have purchased [it] at the price she paid if she had known [it] was contaminated with other oils, and that it was not pure avocado oil.” *Id.* ¶¶ 5–6, 20, 26.

Ms. Golikov does not allege how the Avocado Oil she purchased was “adulterated” or “impure.” She does not allege what the Avocado Oil was adulterated with, in what amount, or why that renders the avocado oil “impure.” *See id.* ¶¶ 5–6, 20, 23–24, 26.

Ms. Golikov also does not allege she tested the Avocado Oil she purchased, or any other avocado oil. Instead, she bases her claims on an August 2024 *Washington Post* article, which in turn reports on two anonymized U.C. Davis studies published in the same pay-to-play journal. Compl. ¶¶ 2, 15 & nn. 8–9 (citing Anahad O’Connor & Aaron Steckleberg, *Why your avocado oil may be fake and contain other cheap oils*, *Washington Post* (Aug. 27, 2024); Hilary S. Green & Selina C. Wang, *First report on quality and purity evaluations of avocado oil sold in the US*, 116 *Food Control* 107328 (Oct. 2020); Green & Wang, *Purity and*

1 *quality of private labelled avocado oil*, 152 Food Control 109837 (Oct. 2023));
2 Harper Decl. Exs. 1–3.³

3 The U.C. Davis studies tested, respectively, 22 and 36 bottles of unidentified
4 avocado oils, which were produced by different manufacturers; sold under different
5 labels; purchased from different retailers; labeled as being of different type and
6 quality; originated from different countries; and included different expiration dates.
7 *Id.* The studies purport to compare the products against a *proposed* standard for
8 avocado oil, while detailing the many faults with using this standard, including that
9 avocado oils may fail to satisfy the standard for many reasons aside from
10 adulteration. Harper Decl. Ex. 3 at 3. Neither U.C. Davis study identified the
11 avocado oils it tested, but *The Washington Post* article reported the study “included
12 Defendant’s Great Value avocado oil.” Compl. ¶ 20. Ms. Golikov’s complaint fails
13 to explain how the results of this testing demonstrate the Avocado Oil she
14 purchased was not “pure avocado oil.” *See generally* Compl.

15 Based on these allegations, Ms. Golikov brings claims on behalf of putative
16 classes of consumers, for violation of (1) California’s False Advertising Law
17 (FAL), Cal. Bus. & Prof. Code § 17500, *et seq*; (2) Consumers Legal Remedies Act
18 (CLRA), Cal. Civ. Code § 1750, *et seq*; and (3) Unfair Competition Law (UCL),
19 Cal. Bus. & Pro. Code § 17200, *et seq*; as well as (4) breach of express warranty;
20 (5) negligent misrepresentation; (6) intentional misrepresentation; and (7) quasi-
21 contract. She seeks “damages, treble damages, and punitive damages” “restitution,”
22 and reasonable attorneys’ fees and costs, *inter alia*. Compl. at 18.

23 **III. THE COURT SHOULD DISMISS ALL CLAIMS WITH PREJUDICE.**

24 Ms. Golikov’s claims should be dismissed with prejudice. (A) All claims fail
25

26 ³ *See also* Science Direct, “Food Control – About the journal” (accessed Nov. 12,
27 2024) (accessed Nov. 12, 2024) (describing \$4,210 “article publishing charge” for
28 the journal *Food Control*), available at
<https://www.sciencedirect.com/journal/food-control>.

1 because she fails to plausibly allege the Avocado Oil is not avocado oil, as required
2 to state the deception required for all her claims; (B) Her claims fail for additional,
3 claim-specific reasons, including (1) she fails to allege the fraudulent intent required
4 for her intentional misrepresentation claims; and (2) she fails to state her claim for
5 punitive damages.

6 **A. Ms. Golikov’s Claims Fail Under the Reasonable Consumer Test.**

7 Ms. Golikov does not (and cannot) plausibly allege that the Avocado Oil,
8 much less the bottle she purchased, was anything other than “avocado oil,” which
9 she must to plead the consumer deception required to state each of her claims. As
10 detailed below, the *McConnon* court already dismissed on this basis, and this Court
11 should follow suit. Even setting aside *McConnon*, Ms. Golikov’s claims
12 independently fail under the reasonable consumer test.

13 **1. Legal Standards: Plausibility, Reasonable Consumer Test,**
14 **and Rule 9(b).**

15 The Court must draw on three pleading requirements to assess the claims.

16 ***Plausibility.*** To survive a motion to dismiss, “the plaintiff [must] plead
17 factual content that allows the court to draw the reasonable inference that the
18 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,
19 678 (2009). The Court need not accept as true “bare assertions” or conclusions of
20 law. *Id.* at 681. “Where a complaint pleads facts that are ‘merely consistent with’ a
21 defendant’s liability, it ‘stops short of the line between possibility and
22 plausibility[.]’” *Id.* at 678; *see also Becerra v. Dr Pepper/Seven Up, Inc.*, 945 F.3d
23 1225, 1231 (9th Cir. 2019) (affirming dismissal for no plausible deception).

24 ***The Reasonable Consumer Test.*** Ms. Golikov must satisfy the “reasonable
25 consumer test,” which requires a plaintiff to allege facts showing consumers “are
26 likely to be deceived.” *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016)
27 (affirming dismissal of CLRA, UCL, FAL, and unjust enrichment claims based on
28 failure to plausibly plead consumer deception); *Robinson v. Unilever U.S., Inc.*,

2019 WL 8012687, at *3 (C.D. Cal. Aug. 21, 2019) (dismissing warranty and fraud claims on this basis). “This is not a negligible burden.” *Moore v. Trader Joe’s Co.*, 4 F.4th 874, 882 (9th Cir. 2021). A plaintiff must plead “more than a mere possibility that [the] label might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner.” *Ebner*, 838 F.3d at 965 (quoting *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508 (2003)). “Rather, [it] requires a probability ‘that a significant portion of reasonable consumers, acting reasonably in the circumstances, could be misled.’” *Id.* (same). “[W]here a Court can conclude as a matter of law that members of the public are not likely to be deceived by the product packaging, dismissal is appropriate.” *Pelayo v. Nestle USA, Inc.*, 989 F. Supp. 2d 973, 978 (C.D. Cal. 2013) (collecting cases).

Rule 9(b). “Where, as here, a plaintiff’s claims are all grounded in fraud,” they must also satisfy “the heightened pleading requirements of Rule 9(b).” *Beasley v. Conagra Brands, Inc.*, 374 F. Supp. 3d 869, 881 (N.D. Cal. 2019). Thus, the “complaint must identify the who, what, when, where, and how of the misconduct charged, as well as what is false or misleading about the purportedly fraudulent statement, and why it is false.” *Salameh v. Tarsadia Hotel*, 726 F. 3d 1124, 1133 (9th Cir. 2013).

Ms. Golikov’s vague and conclusory allegations fail to meet these standards.

2. McConnon Compels Dismissal.

This Court need go no further than Judge Blumenfeld’s recent dismissal order in *McConnon v. The Kroger Co.*, because that well-reasoned decision applies with full-force to the materially identical allegations here.

In *McConnon*, plaintiff Sissy McConnon alleged that defendant Kroger “misabeled [its store-brand] Avocado Oil because it is not ‘pure’ avocado oil—despite the front label referring to the product as ‘Cold-Pressed Avocado Oil’—and the back label listing ‘avocado oil’ as the only ingredient.” 2024 WL 3941340, at *3. McConnon “further allege[d] that third-party laboratory testing confirms that

1 ‘the fatty acid and sterol profiles’ of the Avocado Oil show that it is adulterated and
2 not pure avocado oil.” *Id.* Judge Blumenfeld held such “allegations fail to
3 plausibly state a claim for relief under Rule 8(a), much less any applicable Rule
4 9(b) heightened standard.” *Id.*

5 The court explained that allegations that the avocado oil was advertised as
6 “pure” were “conclusory,” because the term “pure” is “nowhere to be found on the
7 bottle”; “the label says only that the product contains avocado oil, and Plaintiffs fail
8 to plausibly allege in a nonconclusory manner that this is false or deceptive.” *Id.*
9 The court further held that “even if the Court were to accept Plaintiff’s conclusory
10 assertion that the labeling conveys the message that the Avocado Oil is ‘pure,’
11 Plaintiff fails to define that term” and thus “provides insufficient detail from which
12 Defendant can discern how its label is allegedly misleading.” *Id.* The court also
13 noted McConnon “fails to explain the significance of the purportedly high level of
14 fatty acids and sterols [in her testing], rendering the complaint subject to dismissal.”
15 *Id.* at *3 n.3. The court thus concluded “Plaintiff has not adequately alleged that the
16 Avocado Oil is anything other than what it claims to be: cold-pressed avocado oil.”
17 *Id.* at *3. On these grounds, the court dismissed McConnon’s claims under the
18 UCL, FAL, and CLRA, and her warranty and fraud claims. *Id.* at *3–5.

19 The same reasoning applies here, as Ms. Golikov relies on similarly
20 threadbare “testing” allegations that fail to state plausibly how the label is false or
21 misleading—and here, Ms. Golikov did not even conduct her own testing of any
22 product, but instead relies on an article to support her claim. Compl. ¶¶ 6, 20. She,
23 like McConnon, alleges “Refined Avocado Oil” conveys it is “pure,” despite (1) the
24 word “pure” never appearing on the label; and (2) providing no clear definition of
25 “pure” or otherwise alleging how the Avocado Oil is not “pure” avocado oil. Like
26 McConnon, she asserts only conclusory allegations that the product is “impure” and
27 “adulterated” with “other” unidentified “oils,” and does not adequately allege *how*
28 the Avocado Oil she purchased was “adulterated,” what it was “adulterated” with,

1 or other factual allegations that plausibly support her claim. Compl. ¶¶ 5-6, 16, 19,
2 24, 26-27. Like *McConnon*, Ms. Golikov “provides insufficient detail from which
3 Defendant can discern how its label is allegedly misleading ” and she “fail[s] to
4 plausibly state” her claims. 2024 WL 3941340, at *3.

5 This Court should follow *McConnon* and dismiss the Complaint.

6 **3. Ms. Golikov Fails to Allege *How* or *Why* the Label is False.**

7 Ms. Golikov’s claims fail because she alleges no plausible facts (rather than
8 conclusory statements and speculation) that Walmart’s Avocado Oil is not avocado
9 oil or contains something else. To be clear, Ms. Golikov never alleges what exactly
10 she contends is wrong with the Avocado Oil. Instead, she contrives a theory of
11 adulteration based on alleged third-party “testing” of a few avocado oil bottles (not
12 Ms. Golikov’s) that, even if credited as true, does not lead to the plausible
13 conclusion that the Avocado Oil she purchased contains anything other than
14 avocado oil. Her allegations amount to the conclusory assertion that the Avocado
15 Oil is not “pure avocado oil” because it contains an unidentified amount of some
16 unidentified substance other than “pure avocado oil.” Courts disregard such
17 conclusory allegations, and the Court should do so here, because (a) Ms. Golikov’s
18 cited studies fail to provide a plausible foundation for her claim; (b) the vague
19 allegations fail to give Walmart sufficient notice of her claims; and (c) her
20 complaint forecloses materiality.

21 **(a) The “Testing” Allegations Fail Plausibility Standards.**

22 To start, the “testing” Ms. Golikov exclusively relies upon to allege the
23 Avocado Oil is “adulterated” or “impure” fails to provide a plausible basis for her
24 claims. Compl. ¶¶ 5-6, 16, 20. Rather than conducting her own testing of her
25 purchased product (or any other product), Ms. Golikov rests her claims on third-
26 party studies of a handful of avocado oils produced by different companies and
27 which provide little information about the testing conducted, the results, or their
28

1 significance. *Id.*; Harper Decl. Exs. 1–3.⁴ Nor does the Complaint fill the gaps.
2 When held against the pleading standards, her allegations and “testing” fall short, as
3 the testing is nonrepresentative, flawed, and does not plausibly establish that the
4 Avocado Oil Ms. Golikov purchased contained anything other than avocado oil.

5 Courts have dismissed similar testing-based claims of oil adulteration when a
6 plaintiff insufficiently alleged test results suggested certain oil products were
7 impure. *E.g.*, *McConnon*, 2024 WL 3941340, at *5 (finding plaintiff “has not
8 adequately alleged that the Avocado Oil is anything other than what it claims to be:
9 cold-pressed avocado oil.”); *Meyer*, 2011 WL 13216980, at *5 (dismissing similar
10 claims based on flawed U.C. Davis olive oil study); *see also Aloudi v. Intramedic*
11 *Research Grp.*, 729 F. App’x 514, 516 (9th Cir. 2017) (affirming dismissal where
12 cited study was insufficient to “state a sufficiently plausible or specific claim of
13 actual falsity”); *Lowe v. Edgewell Pers. Care Co.*, 711 F. Supp. 3d 1097, 1104
14 (N.D. Cal. Jan. 12, 2024) (dismissing where plaintiff’s testing allegations failed to
15 support plausible claim that product contained PFAS); *Bounthon*, 2024 WL
16 4495501, at *7–8 (same); *Martin v. Omnit Labs Inc.*, 2023 WL 8190712, at *5–7
17 (C.D. Cal. Oct. 18, 2013) (dismissing mislabeling claims where cited studies do not
18 sufficiently support falsity).

19 *Meyer v. Colavita, Inc.* is instructive here. 2011 WL 13216980. In that case,
20 plaintiffs alleged “extra virgin” olive oils they purchased in Florida were
21 adulterated with other oils based solely on a U.C. Davis study (authored by some of
22 the same researchers of the studies Ms. Golikov relies on), which the Court held
23 was insufficient. *Id.* at *1. The testing relied on a “very limited sampling” of olive
24 oil purchased in California which was not “statistically significant,” and included
25 “somewhat inconclusive” results. *Id.* at *5. Even “setting aside [those] flaws, and
26

27 ⁴ Because the studies are incorporated into the Complaint by reference, the Court
28 may consider whether they adequately support Ms. Golikov’s allegations. *See*
Martin v. Doctor’s Best, Inc., 2023 WL 6370230, at *6 (C.D. Cal. Aug. 25, 2023).

1 assuming their results as true,” the tests “at best” supported the inference that the
2 tested oils “do not meet all of the standards promulgated by the IOC for extra virgin
3 olive oil.” *Id.* Because plaintiffs had not alleged “facts presenting a nexus”
4 between the products they purchased and those tested, these results did “little to
5 support an inference that” plaintiffs “have been wronged or sold ‘fake’ olive oil.”
6 *Id.* The court dismissed, holding any extrapolation from that study to the products
7 plaintiffs had purchased was “unwarranted” and “speculat[ive].” *Id.* at *3, 5.

8 Ms. Golikov’s “testing” is even more flawed and tenuous than in *Meyer*, and
9 cannot support her claim:

10 **First**, Ms. Golikov’s testing suffers from the same statistical flaws as the
11 *Meyer* tests. Here, the studies tested only 22 and 36 bottles of avocado oil sold by
12 various companies and produced no statistically significant results as to any one
13 company or product, including the only three Great Value Avocado Oil bottles
14 tested, each with different (and equally vague) “results.” Harper Decl. Ex. 1 at 1,
15 10, Ex. 2 at 2, Ex. 3 at 2. Like the plaintiff in *Meyer*, Ms. Golikov cannot “support
16 [her] claims with speculation and unwarranted extrapolation” from these extremely
17 limited and “somewhat inconclusive” findings. *Meyer*, 2011 WL 13216980, at *5;
18 *see Andrews v. Proctor & Gamble Co.*, 2019 WL 6520045, at *3 (C.D. Cal. June 3,
19 2019) (claim not plausible where based on conclusory allegations that “overstate the
20 findings” of study supporting adulteration).

21 **Second**, the studies admit multiple causes *other than adulteration* could have
22 led to their test results, which also precludes Ms. Golikov’s claim. Harper Decl. Ex.
23 3 at 3. For example, in *Bounthon*, 2024 WL 4495501, at *8, the district court held
24 plaintiffs’ study could not plausibly support their claim that the challenged product
25 contained PFAS, where the test could produce false-positives based on “chemicals
26
27
28

1 that are not PFAS” and the testing method still had “gaps.”⁵ The studies here have
2 the same flaws. The studies explain the variations in the fatty acid levels tested for
3 are “not completely understood,” and that harvest time, cultivars, and geography –
4 rather than adulteration – could have caused the test results. Harper Decl. Ex. 3 at
5 3. What’s more, the study cautions “**the refining process could be causing**” the
6 variations, particularly for *refined* avocado oils, like Walmart’s here. *Id.* These
7 alternative explanations undermine Ms. Golikov’s mislabeling theory, as any
8 negative results could be explained by many possibilities, just one of which is
9 adulteration. The studies thus cannot “permit the court to infer more than the mere
10 possibility” that even the few tested bottles are “impure,” and fail to support Ms.
11 Golikov’s claims. *Iqbal*, 556 U.S. at 679.

12 **Third**, the test results here show, at most, that the tested oils do not all match
13 a *proposed* standard not even adopted by international standards bodies. Harper
14 Decl. Ex. 3 at 1, 3. Ms. Golikov herself admits there are no “enforceable standards”
15 for avocado oil. Compl. ¶ 15. Even the adopted standards in *Meyer* were held to be
16 inadequate, and to “paint[]” only “a very incomplete picture” that could not support
17 plaintiffs’ claims. 2011 WL 13216980 at *5. Ms. Golikov does not otherwise
18 allege how the testing results support her theory of adulteration. *Id.*; *Lowe*, 711 F.
19 Supp. 3d at 1104 (“testing allegations” “insufficient to state a plausible claim”
20 where “conclusory, providing no specificity as to the results reached or any other
21 findings that would support Plaintiff’s interpretation of those results”).

22 **Fourth**, like the plaintiff in *Meyer*, Ms. Golikov fails to allege the requisite
23 “nexus or connection” between the avocado oils tested by the U.C. Davis
24 researchers in 2020 and 2023 and the Avocado Oil she purchased in 2021. *Meyer*,
25 2011 WL 13216980, at *5. As in *Meyer*, the studies here noted only that samples
26

27 ⁵ *Accord Andrews*, 2019 WL 6520045, at *3 (study could not plausibly support
28 allegations that product contained PFAS, where study screened product for
“fluorine,” which only “indicates that PFASs *might* be present”).

1 were purchased “throughout the [United States] and Canada.” Harper Decl. Ex. 3 at
2 1. And, given that those studies tested at most *three* bottles of Great Value
3 Avocado Oil, with differing results, and apparently two years after her purchase,
4 Ms. Golikov alleges no nexus to her own purchase to conclude that her Avocado
5 Oil bottle—which may differ in country of origin, time, area of purchase, corrosive
6 environments, among other factors—was adulterated or impure.

7 In short, Ms. Golikov’s alleged testing fails to push her claims across the
8 Rule 8 and 9(b) thresholds.

9 **4. The Allegations Fail to Provide Sufficient Notice.**

10 Even ignoring the testing flaws, Ms. Golikov’s allegations also fail to provide
11 mandatory notice to Walmart of the claims. *Bly-Magee v. California*, 236 F.3d
12 1014, 1019 (9th Cir. 2001) (“allegations ... must be specific enough to give
13 defendants notice of the particular misconduct ... charged so that they can defend
14 against the charge and not just deny that they have done anything wrong.”).

15 Rules 8 and 9(b) require Ms. Golikov to allege not only the conclusory fact
16 that the Avocado Oil is impure, but also *how* and *why* it is impure. *See McConnon*,
17 2024 WL 3941340, at *3. Courts routinely dismiss claims based on conclusory
18 allegations that a product is impure, artificial, or lacks a quality or ingredient. In
19 *Figy v. Frito-Lay North America*, 67 F. Supp. 3d 1075 (N.D. Cal. 2014), the court
20 dismissed claims challenging the food products’ “All Natural” labeling as
21 misleading, because plaintiffs failed to allege “how or why the offending
22 ingredients are unnatural.” *Id.* at 1090. The court explained “[i]t is insufficient
23 under Rule 9(b) to simply assert ... an ingredient is unnatural”; a plaintiff must
24 “plead *why* these allegedly offending ingredients are unnatural.” *Id.* Other courts
25 have dismissed similar conclusory allegations that products are “artificial” or
26 contain “added sugar” without explaining how or why. *See Svensrud v. Frito-Lay*
27 *N. Am., Inc.*, 2020 WL 8575056, at *4 (C.D. Cal. Dec. 21, 2020) (holding claims
28 not “plausible” because “conclusory allegations were devoid of any facts suggesting

1 the basis for [plaintiff’s] claim that the Product contains artificial cheddar”); *Hadley*
2 *v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1090–92 (N.D. Cal. 2017) (dismissing
3 mislabeling claim based on excessive “added sugar” where plaintiff “inadequately
4 alleged the amount of added sugar”).

5 Similarly, Ms. Golikov fails to meet the pleadings standards, because she
6 does not allege how or why the product is “impure” or “adulterated”—she does not
7 allege, among other crucial factors, what component in the Avocado Oil renders it
8 not “pure,” why it renders the Avocado Oil not “pure,” or how much of any non-
9 pure component is in the product. These basic allegations are critical to place
10 Walmart on notice of her claims. *McConnon*, 2024 WL 3941340, at *3 (dismissing
11 as “the pleading provides insufficient detail from which Defendant can discern how
12 its label is allegedly misleading”). Without these facts, Walmart is left guessing at
13 her theory of falsity and deception: how is the product “adulterated” or “impure”?
14 What does she contend is in her product besides avocado oil? How much? Is it, for
15 example, a natural by-product of refining avocado oil? Does she allege merely a
16 trace amount? Is it nothing at all?

17 Ms. Golikov presents no plausible theory of falsity. Her conclusory
18 allegations fail under both Rule 8(a) and 9(b).

19 **5. The Allegations Preclude A Showing of Materiality.**

20 Ms. Golikov’s failure to identify what renders the avocado oil “impure” also
21 precludes materiality, as required to meet the reasonable consumer standard. *Brod*
22 *v. Sioux Honey Ass’n Co-op.*, 927 F. Supp. 2d 811, 831 (N.D. Cal. 2013)
23 (dismissing claim; complaint “provides no indication that the presence or absence
24 [of the allegedly missing ingredient] plays a substantial part in the reasonable
25 consumer’s decision to purchase honey”); *Bounthon*, 2024 WL 4495501, at *9
26 (dismissing claim where plaintiffs “failed to plausibly allege [the contaminants] are
27 present in the Products at a harmful level.”).
28

1 A misrepresentation is “material” if a reasonable consumer “would attach
2 importance to its existence or nonexistence in determining his choice of action in
3 the transaction in question.” *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009).
4 Ms. Golikov fails to allege how the Avocado Oil differed from consumer
5 expectations, or how the difference is material, leaving fatal gaps in her pleadings.
6 *See Myers-Taylor v. Ornuva Foods N. Am., Inc.*, 2019 WL 424703, at *5 (S.D. Cal.
7 Feb. 4, 2019) (plaintiff failed to satisfy Rule 9(b) where complaint “fails to offer an
8 objective or plausible definition” for the challenged label term); *McConnon*, 2024
9 WL 3941340, at *3 (plaintiff failed to define “pure” or allege how avocado oil at
10 issue differed from consumer expectations); *Tran v. Sioux Honey Assoc. Coop.*, 471
11 F. Supp. 3d 1019, 1026–28 (C.D. Cal. 2020) (explaining the word “pure” “has no
12 fixed meaning” and granting summary judgment as plaintiff failed to offer evidence
13 that consumers would not expect “trace amounts” of other ingredients).

14 * * *

15 In sum, because Ms. Golikov fails to allege “what these [impure] ingredients
16 are and how they are” not pure, *Figy*, 67 F. Supp. 3d at 1090, her bare allegations
17 “stop short of the line between possibility and plausibility” and fail to satisfy either
18 Rule 8(a) or Rule 9(b), *see Iqbal*, 556 U.S. at 678. She will be unable to cure these
19 deficiencies, as the Avocado Oil is in fact avocado oil, and the Court should dismiss
20 all claims with prejudice.

21 **B. Ms. Golikov’s Claims Fail for Additional, Claim-Specific Reasons.**

22 **1. Ms. Golikov’s Fraud Claim Fails for Lack of Intent.**

23 Ms. Golikov’s intentional misrepresentation claim also fails because she does
24 not allege the requisite fraudulent intent. To state her claim, Ms. Golikov “must
25 plead (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance,
26 (4) actual and justifiable reliance, and (5) resulting damage.” *Nazemi v. Specialized*
27 *Loan Serv’g, LLC*, 637 F. Supp. 3d 856, 861 (C.D. Cal. 2022). This requires
28 alleging “specific facts to suggest” plaintiff has the requisite “scienter.” *Lazo v.*

1 *Bank of Am., N.A.*, 2012 WL 1831577, at *9 (N.D. Cal. May 18, 2012). Where a
2 plaintiff alleges only “conclusory” allegations of knowledge—i.e., the defendant
3 “knowingly made a false representation”—dismissal is warranted. *Id.*; accord *Tae*
4 *Hee Lee v. Toyota Motor Sales, USA, Inc.*, 992 F. Supp. 2d 962, 922 (C.D. Cal.
5 2014) (dismissing fraud claim on this basis).

6 Ms. Golikov’s intent allegations fail to rise beyond conclusory. Her
7 conclusory allegation that Walmart “knows, or reasonably should know, that its
8 labeling is misleading customers,” Compl. ¶ 22, is insufficient to plead scienter.
9 And her allegation that Walmart “should know” that its labels were misleading
10 because “[s]ince at least 2020, the avocado oil industry has been aware that there
11 are problems with adulteration,” *id.* ¶ 22, is undermined by her previous admission
12 that only recently did the researchers of the study she cites “reveal[] the names of
13 the avocado oils that had tested impure in their study.” *Id.* ¶ 20 (citing an article
14 published on August 27, 2024). In other words, Ms. Golikov contends Walmart
15 *potentially* had knowledge of claimed adulteration only as recently as August 27,
16 2024, long after she made her purchase in 2021. *See id.* ¶ 26. She fails to allege
17 plausibly that Walmart had knowledge when the alleged representation was made,
18 which is fatal to this claim.

19 **2. The Claim for Punitive Damages Should Be Dismissed.**

20 Ms. Golikov fails to allege sufficient facts supporting her request for punitive
21 damages. “California federal district courts have consistently held that a plaintiff
22 who seeks punitive damages against a corporate defendant must plead more than
23 non-conclusory allegations that an officer, director or managing agent of the
24 defendant authorized or ratified the conduct that constitutes malice, fraud or
25 oppression.” *Rozier v. Dep’t of Homeland Sec. Fed. Protective Serv.*, 2022 WL
26 2199938, at *3 (C.D. Cal. Mar. 7, 2022) (listing cases). Failure to plead “the names
27 or titles of *any* individual actor is a fatal defect.” *Taiwan Semiconductor Mfg. Co.,*
28 *Ltd. v. Tela Innovations, Inc.*, 2014 WL 3705350, at *6 (N.D. Cal. July 24, 2014);

1 *see also Vermillion v. Corrections Corp. of Am.*, 2008 WL 4058063, *11 (E.D. Cal.
2 Aug. 28, 2008) (dismissing punitive damages claim; complaint “fail[ed] to point to
3 conduct of officers or directors”). Where a plaintiff alleges only the conclusory
4 statement that a defendant’s conduct was “willful and malicious,” the claim for
5 punitive damages will not survive a motion to dismiss. *Rausch v. Flatout, Inc.*, 660
6 F. Supp. 3d 855, 863 (N.D. Cal. 2023) (dismissing punitive damages claim in
7 consumer mislabeling action).

8 Ms. Golikov does not include any allegations supporting her request for
9 punitive damages, let alone identify any individual agents whose conduct ratified or
10 authorized such misconduct. *See* Compl ¶ 107. The Court should therefore dismiss
11 her request for punitive damages.

12 IV. CONCLUSION

13 Ms. Golikov brought this lawsuit despite on-point precedent in this district
14 dismissing the same mislabeling theory, based on the same pleading deficiencies as
15 present here. If Ms. Golikov were able to articulate a plausible theory of falsity, she
16 would have alleged it already. Further, the sole support for her claim—the
17 “testing”—cannot support her mislabeling theory. Walmart thus respectfully
18 requests the Court grant this Motion to Dismiss with prejudice. *See Cervantes v.*
19 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (“[A] district
20 court may dismiss without leave where a plaintiff’s proposed amendments would
21 fail to cure the pleading deficiencies and amendment would be futile.”).

22
23 Dated: December 9, 2024

DAVIS WRIGHT TREMAINE LLP

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25 Jacob M. Harper

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28

CERTIFICATION

The undersigned counsel of record for Walmart Inc., certifies that this brief contains 5,586 words, which complies with the word limit of L.R. 11-6.1 and the Court's Standing Order.

/s/ Jacob M. Harper